

GEORGE G. WEICKHARDT (SBN 58586)
WENDY C. KROG (SBN 257010)
ROPER, MAJESKI, KOHN & BENTLEY
201 Spear Street, Suite 1000
San Francisco, CA 94105
Telephone: (415) 543-4800
Facsimile: (415) 972-6301
Email: gweickhardt@rmkb.com
wkrog@rmkb.com

Attorneys for Defendant
CHASE BANK USA, N.A.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

VIRGILIO ESCAMILLA,

Plaintiff,

v.

CHASE BANK USA, N.A.,

and DOES 1 through 10, inclusive,

Defendants.

CASE NO. 08 CV 1536 JM WMC

**NOTICE OF MOTION AND MOTION TO
DISMISS PURSUANT TO FED. R. CIV. P.
12(b)(6) AND TO STRIKE PURSUANT TO
FED. R. CIV. P. 12(f)**

Date: October 17, 2008
Time: 1:30 p.m.
Courtroom: 16
Judge: The Hon. Jeffrey T. Miller

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 17, 2008, at the hour of 1:30 p.m., in Courtroom 16, at the above-entitled Court, located at 880 Front Street, San Diego, California 95113, the Honorable Jeffrey T. Miller presiding, defendant Chase Bank USA, N.A. will and hereby does move as follows:

Chase moves to dismiss the first cause of action under Fed. R. Civ. P. 12(b)(6) on the grounds that it fails to state a claim upon which relief can be granted, because Chase is not a "debt collector" under the Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq.

Chase moves to dismiss the third cause of action under Fed. R. Civ. P. 12(b)(6) on the ground that it fails to state a claim upon which relief can be granted, because it fails to plead the elements of intrusion into a private place and highly offensive conduct.

Chase moves to strike the billing statements attached as Exhibit B to plaintiff's complaint as well as any and all references to "billing statements" as follows on the grounds that billing statements are immaterial matter under Fed. R. Civ. P. 12(f) because the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788.14 specifically exempts billing statements:

Complaint, paragraph 23: "CHASE knew it could no longer call, write, send ~~billing statements, statements of account~~, or any other communication except legal process to the DOAN LAW FIRM, LLP."

Complaint, paragraph 25: "CHASE knew it could only call, write, send ~~billing statements, and send statements of account~~, to the DOAN LAW FIRM, LLP."

Complaint, page 7 chart:

1	01/07/08	Billing Statement	Sent despite notice 1 (see above)
2	01/25/08	Billing Statement	Sent despite notice 1
3	02/07/08	Billing Statement	Sent despite notice 1
4	02/15/08	Letter	Sent despite notice 1
5	02/25/08	Billing Statement	Sent despite notice 1
6	02/27/08	Letter	Sent despite notice 1
7	03/01/08	Phone Call	Sent despite notice 1
8	03/05/08	Letter	Sent despite notice 1
9	03/11/08	Phone Call	Sent despite notice 1
10	03/11/08	Phone Call	Sent despite notice 1
11	03/11/08	Phone Call	Sent despite notice 1
12	03/12/08	Phone Call	Sent despite notice 1
13	03/18/08	Phone Call	Sent despite notice 1
14	03/18/08	Phone Call	Sent despite notice 1
15	04/13/08	Phone Call	Sent despite notice 1 and notice 2
16	04/16/08	Letter	Sent despite notice 1 and notice 2

Chase also moves to strike fourth cause of action in its entirety on that grounds that it is immaterial under Fed. R. Civ. P. 12(f), to the extent that it based alleged violations of the Federal FDCPA, or to the extent that it relies on the billing statements for violations of the Rosenthal FDCPA.

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A Professional Corporation
San Francisco

Finally, Chase moves to strike as follows plaintiff's prayer for \$515,480.00 in punitive damages on the grounds that it is immaterial under Fed. R. Civ. P. 12(f) because plaintiff has failed to state a claim for which punitive damages are available:

Complaint, paragraph 2: "ESCAMILLA seeks actual economic and non-economic damages, attorney fees, costs, injunctive relief, ~~punitive damages~~, and declaratory relief."

Complaint, page 12: "WHEREFORE, ESCAMILLA having set forth the claims for relief against CHASE, respectfully prays that this Court grant relief in the amount of ~~\$595,028.00 monetary damages (\$51,548.00 Actual Damages, \$28,000.00 Penalties, \$515,480 Punitive Damages)~~, Attorney Fees and Costs According to Proof, Injunctive Relief, and Declaratory Relief."

Complaint, page 13, E: "~~Punitive damages of \$514,480.00 equal to 10 times the forgoing Actual Damages for Invasion of Privacy, Right to Seclusion, and Tort in Se;~~"

This motion is based on the attached memorandum of points and authorities and such other papers and pleadings as are on file herein.

Dated: September 5, 2008

Respectfully submitted,

ROPERS, MAJESKI, KOHN & BENTLEY

By: /s/ Wendy C. Krog

GEORGE G. WEICKHARDT
WENDY C. KROG
Attorneys for Defendants
CHASE BANK USA, N.A.